

**Letter of Findings Number: 09-0127P
Corporate Income Tax-Penalty
For the Period 2005**

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ISSUES

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

II. Tax Administration–Underpayment of Estimated Tax Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the penalty for failure to make sufficient estimated taxes during the tax year.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. Taxpayer paid \$4,500, plus claimed a \$28,000 carryforward of overpaid taxes from the previous tax year, during the tax year ending July 31, 2005.

On November 14, 2005, Taxpayer remitted a payment of \$200,000 via electronic funds transfer. However, the Indiana Department of Revenue ("Department") did not credit Taxpayer's account until November 16, 2005. Due to the late payment, the Department imposed a ten-percent negligence penalty as well as a penalty for failure to make sufficient estimated tax payments during the 2005 tax year. However, because Taxpayer's returns ultimately showed that Taxpayer overpaid its 2005 liabilities even after penalties, Taxpayer never received an assessment from the Department until an issue arose on its 2008 return that resulted in Taxpayer owing a balance due.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to pay the balance of its tax liability prior to the statutory due date.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Even though Taxpayer did not remit its payment of corporate income tax for 2005 in a timely manner, Taxpayer has provided sufficient information to establish that it acted with reasonable cause regarding its 2005 tax payment.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Underpayment of Estimated Tax Penalty.

DISCUSSION

Taxpayer protests the imposition of the penalty on Taxpayer's failure to remit estimated tax payments during the tax year.

IC § 6-3-4-4.1(d) provides that a corporation is required to report and pay twenty-five percent of its estimated tax liability for a tax year. These payments are due at stated intervals during the tax year. IC § 6-3-4-4.1(e) provides the "penalty prescribed by [IC 6-8.1-10-2.1](#)(b) shall be assessed by the department" if a corporation fails to make the required estimated payments.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has not provided information to justify its failure to make estimated tax payments during the tax year; therefore, Taxpayer has not established reasonable cause for its failure to make those payments.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is sustained with regard to the ten-percent negligence penalty and denied with regard to the penalty for failure to make estimated tax payments.

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